UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

)
SANTANDER HOLDINGS USA, INC. &)
SUBSIDIARIES,)
)
Plaintiff,)
) Case No. 09-cv-11043
v.)
) Hon. George A. O'Toole, Jr
UNITED STATES OF AMERICA,)
) May 22, 2012
Defendant.)
)

<u>PLAINTIFF'S WITHDRAWAL OF OPPOSITION TO DEFENDANT'S</u> FED. R. CIV. P. 30(a)(2)(B) MOTION FOR LEAVE TO DEPOSE AN INMATE

On April 27, 2012, Plaintiff filed its Opposition to Defendant's Fed. R. Civ. P. 30(a)(2)(B) Motion for Leave to Depose an Inmate ("Opposition"). As explained below, Plaintiff is withdrawing its Opposition.

The United States filed a similar motion to take Mr. Ruble's deposition and Plaintiff opposed that motion in *Salem Financial, Inc. v. United States*, No. 10-192 (Ct. Cl.), a case also involving a STARS financing transaction. On May 11, 2012, Judge Wheeler issued an Order in *Salem Financial* granting the United States' motion to take the deposition of the inmate, Raymond J. Ruble, in Lewisburg, Pennsylvania. In granting the United States' motion, Judge Wheeler identified the following factors supporting his decision: (1) the scope of discovery is broad, (2) it was not clear that Mr. Ruble would claim the Fifth Amendment, (3) it was not clear that the United States would seek to admit such a claim to draw an adverse inference against Plaintiff, and (4) Mr. Ruble's "potential testimony may be relevant to the claims and defenses in

 $[\]frac{1}{2}$ In *Salem Financial*, the United States filed its Motion on April 6, and Plaintiff filed its Opposition on April 30, 2012.

² Order, Salem Financial, Inc. v. United States, No. 10-192 (Ct. Cl. May 11, 2012), ECF No. 81.

this case."³ Judge Wheeler also analyzed the potential burden on Plaintiff in light of the numerous depositions taken in that case, including depositions in London, and that the travel distance to take Mr. Ruble's deposition was less than 200 miles.

Judge Wheeler also ruled that while the United States may take Mr. Ruble's deposition, the court was not making any determination with respect to the admissibility of any Fifth Amendment claim by Mr. Ruble, noting that such issue would be decided if and when it arises.

As the Court is aware, Plaintiff's counsel in this case also represents the Plaintiff in the *Salem Financial* matter. As a result of Judge Wheeler's ruling, counsel will be required to attend Mr. Ruble's deposition in Pennsylvania regardless of the outcome of the United States' motion. Plaintiff's burden as detailed in its Opposition is therefore lessened in this case since the United States has indicated that it anticipates conducting the deposition in both cases on a single day. In the interest of reducing the burden on the Court and the parties, Plaintiff is withdrawing its Opposition, but only to the mere taking of Mr. Ruble's deposition. To the extent Mr. Ruble claims the Fifth Amendment at his deposition, however, Plaintiff intends to object at the appropriate time to any attempt by the United States to use Mr. Ruble's Fifth Amendment claim in support of its case, whether as evidence to support an adverse inference or otherwise.

As noted in Plaintiff's Opposition, the United States has the ability to grant Mr. Ruble with immunity from prosecution prior to his testimony without prejudice. Plaintiff emphasizes the United States' ability to grant immunity in this withdrawal of its Opposition because such a grant of immunity would likely eliminate Mr. Ruble's assertion of the Fifth Amendment, and consequently eliminate the later expected evidentiary dispute regarding the United States' offer of Mr. Ruble's assertion of the Fifth Amendment to establish an adverse inference.

 $[\]frac{3}{2}$ *Id.* at 2.

Respectfully submitted this 22nd day of May, 2012.

COUNSEL FOR PLAINTIFF

/s/ Rajiv Madan

Rajiv Madan, D.C. Bar #463317 John Magee, D.C. Bar #931139 Christopher Bowers, D.C. Bar #468117 Christopher Murphy, D.C. Bar # 500886 Nathan P. Wacker, D.C. Bar # 1004278 BINGHAM MCCUTCHEN LLP 2020 K Street, N.W. Washington, D.C. 20006

Facsimile: (202) 373-6001

Email: raj.madan@bingham.com john.magee@bingham.com chris.bowers@bingham.com christopher.murphy@bingham.com nathan.wacker@bingham.com

James C. McGrath, BBO #564731 Deana K. El-Mallawany, BBO #674825 BINGHAM MCCUTCHEN LLP One Federal Street Boston, MA 02110-1726

Telephone: (617) 951-8000 Facsimile: (617) 345-8736

Email: james.mcgrath@bingham.com deana.el-mallawany@bingham.com

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 22, 2012.

/s/ Rajiv Madan

Rajiv Madan, D.C. Bar #463317 BINGHAM MCCUTCHEN LLP 2020 K Street, N.W. Washington, D.C. 20006

Telephone: (202) 373-6000 Facsimile: (202) 373-6001

Email: raj.madan@bingham.com